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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,240	02/14/2006	Naomi Nishikata	VPM-00101	9555
26339	7590	06/24/2009	EXAMINER	
MUIRHEAD AND SATURNELLI, LLC 200 FRIBERG PARKWAY, SUITE 1001 WESTBOROUGH, MA 01581				HUYNH, NAM TRUNG
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/568,240	NISHIKATA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NAM HUYNH	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 June 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-18 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/12/09 has been entered.

### ***Response to Amendment***

This office action is in response to amendment filed on 6/12/09. Of the previously presented claims 1-18; claims 1-7 and 9-12 were amended.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, lines 4-6 of the claim recite: "an application program execution means environment executable on said [software] platform for executing an

application program using data stored in said second memory means, said application program being platform-independent". The application execution environment executes the application program and is stated to reside "on" the software platform, which implies that the application program is executed "on" the software platform. The Examiner interprets a software platform as a means to execute or run software. The claim is indefinite because the subject matter implies that an application program is executed on a software platform, but the application program is platform-independent. This is a contradiction because an application cannot be executed on a software platform and at the same time be independent from it. Therefore for examining purposes with respect to the prior art, the application program will be interpreted as being "platform-dependent", which is the Examiner's best interpretation of the subject matter.

Regarding claims 4, 5, 6, 7, and 11, the limitations are rejected for the same reasons set forth above in claim 1.

Regarding claims 2, 3, 8-10, and 12-18, the limitations are rejected based on their dependence on the above independent claims.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-7 and 9-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Masuyama et al. (US 2004/0029640) (hereinafter Masuyama).

Regarding claim 1, Masuyama teaches a mobile communication terminal (portable game apparatus) comprising (paragraph 98):

first memory means (latches) and second memory means (work RAM) for storing data (paragraphs 100, 102, 104; latches hold respective values of an X and Y counter); a software platform (work RAM) arranged to use data stored in said first memory means (paragraph 100, 117; work RAM uses data stored in latches for the game program);

an application program execution environment (temporary data) executable on said platform for executing an application program (game program) using data stored in said second memory means, said application program being platform-dependent (paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to execute a game program);

detection means for detecting at least one of position, direction, attitude and movement of the mobile communication terminal along at least one axis of a coordinate system (paragraph 99);

memory process means for performing a memory process to memorize store detection result data acquired based on detection results by said detection means in said first memory means, wherein the detection result data includes information concerning changes to the at least one of position, direction, attitude and movement of

the mobile communication terminal along the at least one axis (paragraphs 102, 104; the latches store values from the xy-axis acceleration sensor and the z-axis contact switch); and

data transfer means for transferring the detection result data memorized stored in said first memory means to said second memory means, according to a data transfer instruction from said application program execution environment (paragraphs 117, 119; the values held in the latches are transferred to the work RAM);

wherein said application program execution environment executes said application program using the detection result data memorized stored in said second memory means (paragraph 100, 117; work RAM is used to execute the game program).

Regarding claim 2, Masuyama teaches said application program execution environment has an instruction set for generating said data transfer instruction according to description in said application program (paragraph 100).

Regarding claim 3, Masuyama teaches an application program (game program), characterized in that a computer in said mobile communication terminal according to claim 2 works so that the application program execution environment generates said data transfer instruction using said instruction set, by being executed by said application program execution environment (paragraphs 99, 100).

Regarding claim 4, Masuyama teaches a mobile communication terminal (portable game apparatus), comprising:

memory means for storing data (paragraphs 98, 102);

a software platform (work RAM) arranged to use data stored in said first memory means (paragraph 100, 117; work RAM uses data stored in latches for the game program);

an application program execution environment (temporary data) executable on said platform for executing an application program (game program) using data stored in said second memory means, said application program being platform-dependent (paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to execute a game program);

a 3-axis magnetic sensor and a 2-axis acceleration sensor used as detection means for detecting at least one of position, direction, attitude and movement of the mobile communication terminal in connection with at least one axis of a coordinate system in accordance with a detection instruction generated by said application program execution environment according to a description of said application program (game program) (paragraphs 99, 108, the detecting means and acceleration sensor are used for instructions to play a game); and

memory process means for storing detection result data acquired based on detection results by said detection means in said memory means, wherein the detection results include information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 102, 104; the latches store values from the xy-axis acceleration sensor and the z-axis contact switch); and

wherein said application program execution environment executes said application program using the detection result data stored in said memory means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 5, Masuyuma teaches a mobile communication terminal (portable game apparatus) comprising:

a software platform (work RAM) arranged to use data stored in said first memory means (paragraph 100, 117; work RAM uses data stored in latches for the game program);

an application program execution environment (temporary data) executable on said platform for executing an application program (game program) using data stored in said second memory means, said application program being platform-dependent (paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to execute a game program);

detection means for detecting at least one of position, direction, attitude and movement of said mobile communication terminal in connection with at least one axis of a coordinate system (paragraph 99); and

data process means for performing data process of assigning the detection data of said detection means to predetermined arithmetic expression (count value) for calculation and storing the calculation result data in said memory means, wherein the detection data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 103, 104); and

wherein said application program execution environment executes the application program using the calculation result data memorized stored in said memory means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 6, Masuyuma teaches a mobile communication terminal (portable game apparatus) comprising:

a software platform (work RAM) arranged to use data stored in said first memory means (paragraph 100, 117; work RAM uses data stored in latches for the game program);

an application program execution environment (temporary data) executable on said platform for executing an application program (game program) using data stored in said second memory means, said application program being platform-dependent (paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to execute a game program);

detection means for detecting at least one of position, direction, attitude and movement of said mobile communication terminal in connection with at least one axis of a coordinate system (paragraph 99); and

data process means (CPU) for performing data processes of linking mutually between detection data of said detection means or data calculated from this detection data (data stored in the latch) and other data acquired by means other than said detection means (program ROM), and storing the linked data in said memory means, wherein the detection data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in

connection with the at least one axis (paragraphs 100, 102; the CPU uses data stored in the latch to and links it to instructions to operate the game program stored in the program ROM); and

wherein said application program execution environment executes the application program using said linked data memorized stored in said memory means (paragraphs 100, 117; the CPU executes the game program in accordance to all received data).

Regarding claim 7, Masuyama teaches Masuyuma teaches a mobile communication terminal (portable game apparatus) comprising:

a software platform (work RAM) arranged to use data stored in said first memory means (paragraph 100, 117; work RAM uses data stored in latches for the game program);

an application program execution environment (temporary data) executable on said platform for executing an application program (game program) using data stored in said second memory means, said application program being platform-dependent (paragraph 100, 117 ; the CPU utilizes the temporary data stored in the work RAM to execute a game program);

detection means for detecting at least one of position, direction, attitude and movement of said mobile communication terminal in connection with at least one axis of a coordinate system (paragraph 99); and

data process means for performing a data process of specifying at least two of detection data of said detection means or data calculated from the detection data (X or

Y axis outputs), which meet predetermined conditions (during a period), and storing the specified data in said memory means, wherein the detection data includes information concerning changes to the at least one of position, direction, attitude and movement of the mobile communication terminal in connection with the at least one axis (paragraphs 99, 104); and

wherein said application program execution environment executes the application program using said specified data memorized stored in said memory means (paragraphs 100, 117; work RAM is used to execute the game program).

Regarding claim 9, Masuyama teaches said detection means includes angle detection means for detecting an angle against the standard angle around a virtual axis leading to a specified direction (paragraph 99, 113).

Regarding claim 10, Masuyama teaches said detection means includes acceleration detection means for detecting acceleration toward a specified direction working on said mobile communication terminal (paragraph 99).

Regarding claim 11, the limitations are rejected as applied to claim 1.

Regarding claim 12, Masayuma teaches the application execution environment is executed using a process that is the same as the memory processor (paragraph 98, the CPU executes the game program and controls operation of the memory).

Regarding claim 13, Masayuma teaches the first memory and the second memory are different memory locations on a memory device (figure 3; the latches are part of the cartridge and the work RAM is part of the memory on the portable game apparatus).

Regarding claim 14, Masayuma teaches the at least one sensor includes at least one of: a magnetic sensor and an acceleration sensor (paragraph 99).

Regarding claim 15, Masayuma teaches the at least one sensor includes a geomagnetic sensor (paragraph 99).

Regarding claim 16, Masayuma teaches the coordinate system includes a spatial three-axis coordinate system (paragraph 99).

Regarding claim 17, Masayuma teaches execution of the application program using the detection result data includes displaying an action on a display of the mobile communication terminal that corresponds to a change in the at least one of position, direction, attitude and movement of the mobile communication terminal (paragraph 100).

Regarding claim 18, Masayuma teaches execution of the application program using the detection result data includes causing at least a portion of the application program to stop executing in response to a change in the at least one of position, direction, attitude and movement of the mobile communication terminal (paragraphs 100, 117).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masuyama et al. (US 2004/0029640) (hereinafter Masuyama) in view of Hartman et al. (US 7,175,529) (hereinafter Hartman).

Masuyama teaches the limitations set forth in claims 5, 6, or 7, and that the mobile communication terminal further comprises radio communication means for communicating outside by wireless communication utilizing radio waves (paragraph 98), but does not explicitly teach radio wave strength confirmation means for confirming strength of the radio waves utilized by said radio communication means at specified time intervals; wherein said data process means is used as at least one part of said radio wave strength confirmation means and performs said data process when confirming radio wave strength. Hartman teaches a RF receiver module for receiving game signals that comprises a receive signal strength indicator (RSSI) level detector module for detecting signals from a game controller that transmits at different time intervals. If the RSSI level is of sufficient strength the detector module sends a data enable signal (confirmation of signal strength at specified time intervals). When the signal is considered valid, the saved game data (perform data process) is passed

(column 5, lines 52-67, column 6, lines 26-45). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Masuyama, to include a RSSI level indicator, as taught by Hartman, in order to inform a user of the invention of the signal strength for playing a game using the modem. This modification enhances the flexibility of the invention by allowing a user to take action in response to signal strength (i.e. a user may move to a location with stronger signal strength while participating in a game).

### ***Response to Arguments***

9. Applicant's arguments filed 6/12/09 have been fully considered but they are not persuasive.

Applicant asserts that Masuyama does not teach or suggest a software platform arranged to use data stored in said first memory means, application program execution environment executable on said platform for executing an application program using data stored in said second memory means, said application program being platform-independent. As stated above, the Examiner interprets a software platform as a means to execute or run software. The work RAM of Masuyama renders a software platform because it a piece of hardware that contains data or instructions to execute the game program, or run software. The data or instructions stored in the work RAM renders the application program execution environment because these instructions provide an "environment" to execute the game program.

10. Applicant also asserts that the claim recites that the application program execution environment is a separate environment run on the software platform that executes an application program which is platform independent. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the application program execution environment is **a separate environment** (emphasis added) run on the software platform) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

For these reasons and the reasons above, the rejection applied in the previous office action has been maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAM HUYNH whose telephone number is (571)272-5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

/Nam Huynh/  
Examiner, Art Unit 2617